

20-6008

No. \_\_\_\_\_

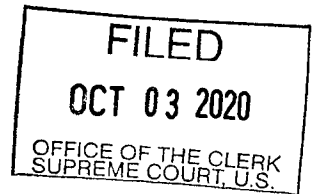
ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Brian Evans — PETITIONER  
(Your Name)

Kai Kahala <sup>vs.</sup> — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

Hawaii Supreme Court

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Brian Evans

(Your Name)

160 Keonekai Rd. #25-104

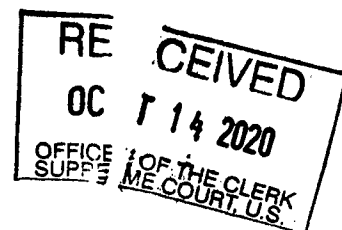
(Address)

Kihui, Hawaii 96753

(City, State, Zip Code)

808-276-5235

(Phone Number)



### **QUESTIONS(S) PRESENTED**

- 1. During an Objection to an Election, if a candidate is duly served and fails to Answer the Complaint or otherwise appear, is he in Default and should Default Judgement be entered against him and his primary win set aside?**
- 2. May a party who is not named as a Defendant in a case file a Motion to Dismiss the Complaint on behalf of the *actual Defendant* despite making no appearance in the case on behalf of that Defendant? A Motion that is then Granted?**
- 3. Can a Defendant, despite Hawai'i's own Election Laws, be allowed to disregard a properly and legally served Civil Complaint, not Answer that Complaint per Hawaii Election Laws, and still be considered the Primary winner despite the Complaint seeking to set his primary win aside?**
- 4. Can the Hawai'i Supreme Court disregard its own laws pertaining to when an Objection to an Election must be Answered by a Duly Served Defendant and then Deny Plaintiff's claims for relief?**

## QUESTION(S) PRESENTED.

1. The first question is whether the defendant is entitled to a jury trial. The answer is yes. The defendant is entitled to a jury trial because the offense is a crime and the defendant is charged with a crime.

2. The second question is whether the defendant is entitled to a jury trial. The answer is yes. The defendant is entitled to a jury trial because the offense is a crime and the defendant is charged with a crime.

3. The third question is whether the defendant is entitled to a jury trial. The answer is yes. The defendant is entitled to a jury trial because the offense is a crime and the defendant is charged with a crime.

4. The fourth question is whether the defendant is entitled to a jury trial. The answer is yes. The defendant is entitled to a jury trial because the offense is a crime and the defendant is charged with a crime.

## **LIST OF PARTIES**

[ ] All parties appear in the caption of the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1.) CLARE E. CONNORS, AG of Hawaii,  
PATRICIA OHARA, Deputy AG of Hawaii,  
LORI N. TANIGAWA, Deputy AG of Hawaii,  
425 Queen Street  
Honolulu, Hawai'i 96813, Counsel for Hawaii Elections Commissioner
  
- 2.) SCOTT T. NAGO  
Office of Elections  
802 Lehua Avenue  
Pearl City, Hawaii 96782

## **RELATED CASES**

NOELLE FAMERA v. KAI KAHELE, CASE NUMBER SCEC-20-0000507 in the Hawaii  
Supreme Court

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A-2 to the petition and is

☐ reported at \_\_\_\_\_; or,

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 10/2/2020.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Supreme Court FED.R.CIV.P. 55.....Page 1

## STATEMENT OF THE CASE

In the 2020 Primary for US Congress, District 2, in the State of Hawaii, the Plaintiff, who was/is a Candidate for this Office filed an Objection per Hawai'i Law (Hawaii State Law, HRS §§11-172, 11-173.5, 11-174.5, and 11-175) and the Hawaii Election Commissions own website states:

"Upon filing the complaint, the Supreme Court will issue a summons requiring the defendants to respond no later than 4:30 pm on the fifth day after they are served. The Supreme Court will issue its judgment fully stating all findings of fact and of law no later than 4:30 pm on the fourth day after the return on the summons. This will include a determination of which candidate was nominated to appear on the general election ballot or who was outright elected, depending on the office."

The Plaintiff served the Defendant, and a Proof of Service was filed. The Defendant, Kai Kahele, never Answered the Complaint. The Plaintiff then filed a Notice of Default for the Defendants failure to Answer the Complaint. The Supreme Court of the United States itself that "If a defendant fails to respond to a complaint within the time allowed, the plaintiff may seek a default judgment." FED.R.CIV.P. 55.

In 10 Haw. App. at 416, 876 P.2d at 1345 ("defaulted party who failed to answer a complaint must make a showing why the party was justified in failing to respond to the complaint").

The Defendant did not respond, and neither the Hawaii Elections Commissioner or the Hawaii Supreme Court can act as the attorneys for the Defendant in this case for which he is in Default for failure to Answer the Complaint.

The Hawaii Supreme Court denied for Notice of Default and Motion for Default Judgement and to set aside his Primary win, despite the Defendants failure to Answer the Complaint or appear in any way to Answer said Complaint. Hawaii Election Law states that the Defendant is to Answer a Duly Served Complaint within five (5) days. The Defendant did not. Hawaii Election Law also states that the Hawaii Supreme Court will "Rule within 5 days" upon Proof of Service being filed with their Court (a summons and Affidavit of service that was filed with their Court).

Still, the Hawaii Supreme Court defied long held law, law that has even been upheld by The US Supreme Court. The Hawaii Supreme Court abused it's discretion in Denying the Notice of Default/Motion for Default Judgement and Motion to Set Aside the Primary Win of Kai Kahele for his failure to Answer a Duly Served Complaint. "The court abuses its discretion if it bases it's ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence. Stated differently, an abuse of discretion occurs where the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant. Id. (quoting Molinar v. Schweizer, 95 Hawai'i 331, 335, 22 P.3d 978, 982 (2001)).

In the midst of this case, the Hawaii Elections Commissioner, Scott T. Nago, filed a Motion to Dismiss. Scott T. Nago, as even the Hawaii Supreme Court stated in contradictory Orders within this case, was not a named Defendant in this case, and yet filed a Motion to Dismiss despite having no standing in the case by counsel, various Hawaii Attorney Generals, who never filed any appearance on behalf of the singularly named Defendant in this case, Kai Kahele.

Defendant Kahele was unrepresented, never filed an Answer, and the Hawaii Supreme Court dismissed the Plaintiff's Complaint when Scott Nago, the Hawaii Election Commissioner who was never named as a Defendant, filed a Motion to Dismiss through his attorneys, who did not represent Defendant Kahele, who remains in Default. The Defendant simply never Answered the Complaint.

## **REASONS FOR GRANTING THE PETITION**

There can be no more serious a case than an Objection to an election.

The Primary Winner for an election for US Congress should not be able to ignore a Duly Served Complaint, ignore it, and then have unrelated parties to the case file Motions to Dismiss the Complaint when they are not a party to the case, nor did they ever enter an appearance in this case on behalf of the Defendant. Those who inserted themselves in this Civil Case, which was Duly Served upon the Defendant, had no standing to represent the Defendant, and no standing to file a Motion to Dismiss on behalf of the duly served Defendant Kahele in this case.

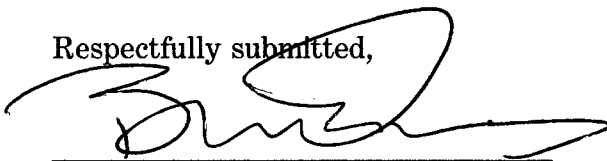
The Defendant was served. The Defendant failed to Answer. The US Supreme Court has been firm on this issue and Hawai'i has ignored it because they were more concerned with the Democratic Candidate they wanted to win than the law.

We must never send the message that anyone is above the law.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "B. Smith", written over a horizontal line.

Date: 10/6/2020